

AMENDED IN SENATE MAY 24, 2004

AMENDED IN SENATE MAY 4, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE MARCH 23, 2004

SENATE BILL

No. 1234

Introduced by Senator Kuehl
(Coauthor: Assembly Member Chu)

February 12, 2004

An act to amend Section 52.1 of the Civil Code, to amend Sections 200 and 220 of the Education Code, to amend Section 12926 of the Government Code, and to amend Sections 190.03, 422.6, 422.7, 422.75, 594.3, 11410, 11413, 13023, 13515.25, ~~13519.4, and 13519.6~~ *and 13519.4* of, to amend and renumber Sections 422.95, 1170.75, and 13873 of, to add Sections 422.77, 422.78, 422.86, 422.89, 422.91, 422.93, 13519.64, and 13519.65 to, to add Chapter 1 (commencing with Section 422.55) to Title 11.6 of Part 1 of, to add a chapter heading to Chapter 2 immediately preceding Section 422.6 of Title 11.6 of Part 1 of, to add Chapter 3 (commencing with Section 422.88) to Title 11.6 of Part 1 of, to repeal Sections 422.76, 13870, and 13871 of, and to repeal and add Section 422.9 of, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, Kuehl. Crimes: civil rights.

Existing law provides that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the

Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. Existing law also provides that no person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. Existing law requires that any person who violates these provisions be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that fine and imprisonment.

Existing law provides, except in the case of a person punished under the above provisions, that any crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed \$10,000, or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, under specified circumstances, including that the crime against property causes damage in excess of \$500.

This bill would revise and recast the provisions relating to hate crimes by, among other things, providing a definition for the term "hate crime." This bill would reduce the above property damage amount to \$400. Because this bill would change the definition of existing crimes and expand the scope of an existing crime, it would impose a state-mandated local program.

Under existing law, the Commission on Peace Officer Standards and Training is required to establish and keep updated a continuing education classroom training course relating to law enforcement



interaction with developmentally disabled and mentally ill persons. The course is required to contain core instruction in specified areas.

This bill would change the term “developmentally disabled and mentally ill persons” to “mentally disabled persons.” This bill would include in the course instruction *by July 1, 2006*, instruction on the fact that the crime was committed in whole or in part because of an actual or perceived disability of the victim is a hate crime. The bill would require the commission, using available funding, to develop *by July 1, 2005*, a 2-hour telecourse to be made available to all law enforcement agencies in California on crimes against homeless persons and on how to deal effectively and humanely with homeless persons, including homeless persons with disabilities. The telecourse would be required to include information on multimission criminal extremism, as defined. ~~The bill would also require each state and local law enforcement agency that reports crimes to the Department of Justice to report when a victim appears to be homeless or self-identifies as homeless. Because this bill would increase the duties of local officials, it would impose a state-mandated local program.~~

Existing law requires the commission to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. Existing law requires the course to include instruction in specified areas.

This bill would, in addition, *by July 1, 2007*, require the course to have instruction in multimission criminal extremism, the special problems inherent in some categories of hate crimes, preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the Attorney General determines are likely. This bill would require that the commission include in the guidelines a framework and possible content of general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and local law enforcement agencies would be encouraged to adopt, as specified.

The bill would make other conforming changes.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide~~



~~and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 52.1 of the Civil Code is amended to
2 read:

3 52.1. (a) If a person or persons, whether or not acting under
4 color of law, interferes by threats, intimidation, or coercion, or
5 attempts to interfere by threats, intimidation, or coercion, with the
6 exercise or enjoyment by any individual or individuals of rights
7 secured by the Constitution or laws of the United States, or of the
8 rights secured by the Constitution or laws of this state, the Attorney
9 General, or any district attorney or city attorney may bring a civil
10 action for injunctive and other appropriate equitable relief in the
11 name of the people of the State of California, in order to protect
12 the peaceable exercise or enjoyment of the right or rights secured.
13 An action brought by the Attorney General, any district attorney,
14 or any city attorney may also seek a civil penalty of twenty-five
15 thousand dollars (\$25,000). If this civil penalty is requested, it
16 shall be assessed individually against each person who is
17 determined to have violated this section and the penalty shall be
18 awarded to each individual whose rights under this section are
19 determined to have been violated.

20 (b) Any individual whose exercise or enjoyment of rights
21 secured by the Constitution or laws of the United States, or of



1 rights secured by the Constitution or laws of this state, has been
2 interfered with, or attempted to be interfered with, as described in
3 subdivision (a), may institute and prosecute in his or her own name
4 and on his or her own behalf a civil action for damages, including,
5 but not limited to, damages under Section 52, injunctive relief, and
6 other appropriate equitable relief to protect the peaceable exercise
7 or enjoyment of the right or rights secured.

8 (c) An action brought pursuant to subdivision (a) or (b) may be
9 filed either in the superior court for the county in which the
10 conduct complained of occurred or in the superior court for the
11 county in which a person whose conduct complained of resides or
12 has his or her place of business. An action brought by the Attorney
13 General pursuant to subdivision (a) also may be filed in the
14 superior court for any county wherein the Attorney General has an
15 office, and in that case, the jurisdiction of the court shall extend
16 throughout the state.

17 (d) If a court issues a temporary restraining order or a
18 preliminary or permanent injunction in an action brought pursuant
19 to subdivision (a) or (b), ordering a defendant to refrain from
20 conduct or activities, the order issued shall include the following
21 statement: VIOLATION OF THIS ORDER IS A CRIME
22 PUNISHABLE UNDER SECTION 422.77 OF THE PENAL
23 CODE.

24 (e) The court shall order the plaintiff or the attorney for the
25 plaintiff to deliver, or the clerk of the court to mail, two copies of
26 any order, extension, modification, or termination thereof granted
27 pursuant to this section, by the close of the business day on which
28 the order, extension, modification, or termination was granted, to
29 each local law enforcement agency having jurisdiction over the
30 residence of the plaintiff and any other locations where the court
31 determines that acts of violence against the plaintiff are likely to
32 occur. Those local law enforcement agencies shall be designated
33 by the plaintiff or the attorney for the plaintiff. Each appropriate
34 law enforcement agency receiving any order, extension, or
35 modification of any order issued pursuant to this section shall
36 serve forthwith one copy thereof upon the defendant. Each
37 appropriate law enforcement agency shall provide to any law
38 enforcement officer responding to the scene of reported violence,
39 information as to the existence of, terms, and current status of, any
40 order issued pursuant to this section.



(f) A court shall not have jurisdiction to issue an order or injunction under this section, if that order or injunction would be prohibited under Section 527.3 of the Code of Civil Procedure.

(g) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law, including, but not limited to, an action, remedy, or procedure brought pursuant to Section 51.7.

(h) In addition to any damages, injunction, or other equitable relief awarded in an action brought pursuant to subdivision (b), the court may award the petitioner or plaintiff reasonable attorney's fees.

(i) A violation of an order described in subdivision (d) may be punished either by prosecution under Section 422.77 of the Penal Code, or by a proceeding for contempt brought pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure. However, in any proceeding pursuant to the Code of Civil Procedure, if it is determined that the person proceeded against is guilty of the contempt charged, in addition to any other relief, a fine may be imposed not exceeding one thousand dollars (\$1,000), or the person may be ordered imprisoned in a county jail not exceeding six months, or the court may order both the imprisonment and fine.

(j) Speech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.

(k) No order issued in any proceeding brought pursuant to subdivision (a) or (b) shall restrict the content of any person's speech. An order restricting the time, place, or manner of any person's speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights, consistent with the constitutional rights of the person sought to be enjoined.

SEC. 2. Section 200 of the Education Code is amended to read:

200. It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any actual or perceived characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 3. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, or any actual or perceived characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 4. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) “Affirmative relief” or “prospective relief” includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) “Age” refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) “Employee” does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) “Employer” includes any person regularly employing five or more persons, or any person acting as an agent of an employer,



1 directly or indirectly, the state or any political or civil subdivision
2 of the state, and cities, except as follows:

3 “Employer” does not include a religious association or
4 corporation not organized for private profit.

5 (e) “Employment agency” includes any person undertaking
6 for compensation to procure employees or opportunities to work.

7 (f) “Essential functions” means the fundamental job duties of
8 the employment position the individual with a disability holds or
9 desires. “Essential functions” does not include the marginal
10 functions of the position.

11 (1) A job function may be considered essential for any of
12 several reasons, including, but not limited to, any one or more of
13 the following:

14 (A) The function may be essential because the reason the
15 position exists is to perform that function.

16 (B) The function may be essential because of the limited
17 number of employees available among whom the performance of
18 that job function can be distributed.

19 (C) The function may be highly specialized, so that the
20 incumbent in the position is hired for his or her expertise or ability
21 to perform the particular function.

22 (2) Evidence of whether a particular function is essential
23 includes, but is not limited to, the following:

24 (A) The employer’s judgment as to which functions are
25 essential.

26 (B) Written job descriptions prepared before advertising or
27 interviewing applicants for the job.

28 (C) The amount of time spent on the job performing the
29 function.

30 (D) The consequences of not requiring the incumbent to
31 perform the function.

32 (E) The terms of a collective bargaining agreement.

33 (F) The work experiences of past incumbents in the job.

34 (G) The current work experience of incumbents in similar jobs.

35 (g) “Labor organization” includes any organization that exists
36 and is constituted for the purpose, in whole or in part, of collective
37 bargaining or of dealing with employers concerning grievances,
38 terms or conditions of employment, or of other mutual aid or
39 protection.

40 (h) “Medical condition” means either of the following:

1 (1) Any health impairment related to or associated with a
2 diagnosis of cancer or a record or history of cancer.

3 (2) Genetic characteristics. For purposes of this section,
4 “genetic characteristics” means either of the following:

5 (A) Any scientifically or medically identifiable gene or
6 chromosome, or combination or alteration thereof, that is known
7 to be a cause of a disease or disorder in a person or his or her
8 offspring, or that is determined to be associated with a statistically
9 increased risk of development of a disease or disorder, and that is
10 presently not associated with any symptoms of any disease or
11 disorder.

12 (B) Inherited characteristics that may derive from the
13 individual or family member, that are known to be a cause of a
14 disease or disorder in a person or his or her offspring, or that are
15 determined to be associated with a statistically increased risk of
16 development of a disease or disorder, and that are presently not
17 associated with any symptoms of any disease or disorder.

18 (i) “Mental disability” includes, but is not limited to, all of the
19 following:

20 (1) Having any mental or psychological disorder or condition,
21 such as mental retardation, organic brain syndrome, emotional or
22 mental illness, or specific learning disabilities, that limits a major
23 life activity. For purposes of this section:

24 (A) “Limits” shall be determined without regard to mitigating
25 measures, such as medications, assistive devices, or reasonable
26 accommodations, unless the mitigating measure itself limits a
27 major life activity.

28 (B) A mental or psychological disorder or condition limits a
29 major life activity if it makes the achievement of the major life
30 activity difficult.

31 (C) “Major life activities” shall be broadly construed and shall
32 include physical, mental, and social activities and working.

33 (2) Any other mental or psychological disorder or condition
34 not described in paragraph (1) that requires special education or
35 related services.

36 (3) Having a record or history of a mental or psychological
37 disorder or condition described in paragraph (1) or (2), which is
38 known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

“Mental disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) “On the bases enumerated in this part” means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

(k) “Physical disability” includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) “Limits” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of “disability” used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of



1 qualified readers or interpreters, and other similar
2 accommodations for individuals with disabilities.

3 (o) “Religious creed,” “religion,” “religious observance,”
4 “religious belief,” and “creed” include all aspects of religious
5 belief, observance, and practice.

6 (p) “Sex” includes, but is not limited to, pregnancy, childbirth,
7 or medical conditions related to pregnancy or childbirth. “Sex”
8 also includes, but is not limited to, a person’s gender, as defined
9 in Section 422.56 of the Penal Code.

10 (q) “Sexual orientation” means heterosexuality,
11 homosexuality, and bisexuality.

12 (r) “Supervisor” means any individual having the authority, in
13 the interest of the employer, to hire, transfer, suspend, lay off,
14 recall, promote, discharge, assign, reward, or discipline other
15 employees, or the responsibility to direct them, or to adjust their
16 grievances, or effectively to recommend that action, if, in
17 connection with the foregoing, the exercise of that authority is not
18 of a merely routine or clerical nature, but requires the use of
19 independent judgment.

20 (s) “Undue hardship” means an action requiring significant
21 difficulty or expense, when considered in light of the following
22 factors:

23 (1) The nature and cost of the accommodation needed.

24 (2) The overall financial resources of the facilities involved in
25 the provision of the reasonable accommodations, the number of
26 persons employed at the facility, and the effect on expenses and
27 resources or the impact otherwise of these accommodations upon
28 the operation of the facility.

29 (3) The overall financial resources of the covered entity, the
30 overall size of the business of a covered entity with respect to the
31 number of employees, and the number, type, and location of its
32 facilities.

33 (4) The type of operations, including the composition,
34 structure, and functions of the workforce of the entity.

35 (5) The geographic separateness, administrative, or fiscal
36 relationship of the facility or facilities.

37 SEC. 5. Section 190.03 of the Penal Code is amended to read:

38 190.03. (a) A person who commits first-degree murder that
39 is a hate crime shall be punished by imprisonment in the state
40 prison for life without the possibility of parole.



(b) The term authorized by subdivision (a) shall not apply unless the allegation is charged in the accusatory pleading and admitted by the defendant or found true by the trier of fact. The court shall not strike the allegation, except in the interest of justice, in which case the court shall state its reasons in writing for striking the allegation.

(c) For the purpose of this section, “hate crime” has the same meaning as in Section 422.55.

(d) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 6. Chapter 1 (commencing with Section 422.55) is added to Title 11.6 of Part 1 of the Penal Code, to read:

CHAPTER 1. DEFINITIONS

422.55. For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

(a) “Hate crime” means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

(1) Disability.

(2) Gender.

(3) Nationality.

(4) Race or ethnicity.

(5) Religion.

(6) Sexual orientation.

(7) Association with a person or group with one or more of these actual or perceived characteristics.

(b) “Hate crime” includes, but is not limited to, a violation of Section 422.6.

422.56. For purposes of this title, the following definitions shall apply:

(a) “Association with a person or group with these actual or perceived characteristics” includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person

1 that has, or is identified with people who have, one or more of those
2 characteristics listed in the definition of “hate crime” under
3 paragraphs 1 to 6, inclusive, of subdivision (a) of Section 422.55.

4 (b) “Disability” includes mental disability and physical
5 disability as defined in Section 12926 of the Government Code.

6 (c) “Gender” means sex, and includes a person’s gender
7 identity and gender related appearance and behavior whether or
8 not stereotypically associated with the person’s assigned sex at
9 birth.

10 (d) “In whole or in part because of” means that the bias
11 motivation must be a cause in fact of the offense, whether or not
12 other causes also exist. When multiple concurrent motives exist,
13 the prohibited bias must be a substantial factor in bringing about
14 the particular result. There is no requirement that the bias be a main
15 factor, or that the crime would not have been committed but for the
16 actual or perceived characteristic. This subdivision does not
17 constitute a change in, but is declaratory of, existing law under In
18 re M.S.(1995) 10 Cal. 4th 698 and People v. Superior Court
19 (Aishman)(1995) 10 Cal. 4th 735.

20 (e) “Nationality” includes citizenship, country of origin, and
21 national origin.

22 (f) “Race or ethnicity” includes ancestry, color, and ethnic
23 background.

24 (g) “Religion” includes all aspects of religious belief,
25 observance, and practice and includes agnosticism and atheism.

26 (h) “Sexual orientation” ~~has the same meaning as in Section~~
27 ~~12926 of the Government Code.~~ *means heterosexuality,*
28 *homosexuality, or bisexuality.*

29 (i) “Victim” includes, but is not limited to, a community
30 center, educational facility, entity, family, group, individual,
31 office, meeting hall, person, place of worship, private institution,
32 public agency, library, or other victim or intended victim of the
33 offense.

34 422.57. For purposes this code, unless an explicit provision of
35 law or the context clearly requires a different meaning, “gender”
36 has the same meaning as in Section 422.56.

37 SEC. 7. A chapter heading is added to Chapter 2 immediately
38 preceding Section 422.6 of Title 11.6 of Part 1 of the Penal Code,
39 to read:

40

CHAPTER 2. CRIMES AND PENALTIES

SEC. 8. Section 422.6 of the Penal Code is amended to read:

422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

SEC. 9. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any hate crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or

1 interfering with that other person's free exercise or enjoyment of
2 any right secured to him or her by the Constitution or laws of this
3 state or by the Constitution or laws of the United States, under any
4 of the following circumstances, which shall be charged in the
5 accusatory pleading:

6 (a) The crime against the person of another either includes the
7 present ability to commit a violent injury or causes actual physical
8 injury.

9 (b) The crime against property causes damage in excess of four
10 hundred dollars (\$400).

11 (c) The person charged with a crime under this section has been
12 convicted previously of a violation of subdivision (a) or (b) of
13 Section 422.6, or has been convicted previously of a conspiracy to
14 commit a crime described in subdivision (a) or (b) of Section
15 422.6.

16 SEC. 10. Section 422.75 of the Penal Code is amended to
17 read:

18 422.75. (a) Except in the case of a person punished under
19 Section 422.7, a person who commits a felony that is a hate crime
20 or attempts to commit a felony that is a hate crime, shall receive
21 an additional term of one, two, or three years in the state prison,
22 at the court's discretion.

23 (b) Except in the case of a person punished under Section 422.7
24 or subdivision (a) of this section, any person who commits a felony
25 that is a hate crime, or attempts to commit a felony that is a hate
26 crime, and who voluntarily acted in concert with another person,
27 either personally or by aiding and abetting another person, shall
28 receive an additional two, three, or four years in the state prison,
29 at the court's discretion.

30 (c) For the purpose of imposing an additional term under
31 subdivision (a) or (b), it shall be a factor in aggravation that the
32 defendant personally used a firearm in the commission of the
33 offense. Nothing in this subdivision shall preclude a court from
34 also imposing a sentence enhancement pursuant to Section
35 12022.5, 12022.53, or 12022.55, or any other law.

36 (d) A person who is punished pursuant to this section also shall
37 receive an additional term of one year in the state prison for each
38 prior felony conviction on charges brought and tried separately in
39 which it was found by the trier of fact or admitted by the defendant
40 that the crime was a hate crime. This additional term shall only



1 apply where a sentence enhancement is not imposed pursuant to
2 Section 667 or 667.5.

3 (e) Any additional term authorized by this section shall not be
4 imposed unless the allegation is charged in the accusatory pleading
5 and admitted by the defendant or found to be true by the trier of
6 fact.

7 (f) Any additional term imposed pursuant to this section shall
8 be in addition to any other punishment provided by law.

9 (g) Notwithstanding any other provision of law, the court may
10 strike any additional term imposed by this section if the court
11 determines that there are mitigating circumstances and states on
12 the record the reasons for striking the additional punishment.

13 SEC. 11. Section 422.76 of the Penal Code is repealed.

14 SEC. 12. Section 422.77 is added to the Penal Code, to read:

15 422.77. (a) Any willful and knowing violation of any order
16 issued pursuant to subdivision (a) or (b) of Section 52.1 of the Civil
17 Code shall be a misdemeanor punishable by a fine of not more than
18 one thousand dollars (\$1,000), or by imprisonment in the county
19 jail for not more than six months, or by both the fine and
20 imprisonment.

21 (b) A person who has previously been convicted one or more
22 times of violating an order issued pursuant to subdivision (a) or (b)
23 of Section 52.1 of the Civil Code upon charges separately brought
24 and tried shall be imprisoned in the county jail for not more than
25 one year. Subject to the discretion of the court, the prosecution
26 shall have the opportunity to present witnesses and relevant
27 evidence at the time of the sentencing of a defendant pursuant to
28 this subdivision.

29 (c) The prosecuting agency of each county shall have the
30 primary responsibility for the enforcement of orders issued
31 pursuant to Section 52.1 of the Civil Code.

32 (d) The court may order a defendant who is convicted of a hate
33 crime to perform a minimum of community service, not to exceed
34 400 hours, to be performed over a period not to exceed 350 days,
35 during a time other than his or her hours of employment or school
36 attendance.

37 SEC. 13. Section 422.78 is added to the Penal Code, to read:

38 422.78. The prosecuting agency of each county shall have the
39 primary responsibility for the enforcement of orders issued
40 pursuant to this title or Section 52.1 of the Civil Code.

SEC. 14. Section 422.86 is added to the Penal Code, to read:

422.86. (a) It is the public policy of this state that the principal goals of sentencing for hate crimes, are the following:

(1) Punishment for the hate crimes committed.

(2) Crime and violence prevention, including prevention of recidivism and prevention of crimes and violence in prisons and jails.

(3) Restorative justice for the immediate victims of the hate crimes and for the classes of persons terrorized by the hate crimes.

(b) The Judicial Council shall develop a rule of court guiding hate crime sentencing to implement the policy in subdivision (a). In developing the rule of court, the council shall consult experts including organizations representing hate crime victims.

SEC. 15. Chapter 3 (commencing with Section 422.88) is added to Title 11.6 of Part 1 of the Penal Code, to read:

CHAPTER 3. GENERAL PROVISIONS

422.88. (a) The court in which a criminal proceeding stemming from a hate crime or alleged hate crime is filed shall take all actions reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of the alleged victim, or of a person who is a victim of, or at risk of becoming a victim of, a hate crime.

(b) Restraining orders issued pursuant to subdivision (a) may include provisions prohibiting or restricting the photographing of a person who is a victim of, or at risk of becoming a victim of, a hate crime when reasonably required to safeguard the health, safety, or privacy of that person.

SEC. 16. Section 422.89 is added to the Penal Code, to read:

422.89. It is the intent of the Legislature to encourage counties, cities, law enforcement agencies, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes and to assist victims.

SEC. 17. Section 422.9 of the Penal Code is repealed.

SEC. 18. Section 422.9 is added to the Penal Code, to read:

422.9. All state and local agencies shall use the definition of “hate crime” set forth in subdivision (a) of Section 422.55 exclusively, except as other explicit provisions of state or federal law may require otherwise.

1 SEC. 19. Section 422.91 is added to the Penal Code, to read:
2 422.91. The Department of Corrections and the California
3 Youth Authority, subject to available funding, shall do each of the
4 following:

5 (a) Cooperate fully and participate actively with federal, state,
6 and local law enforcement agencies and community hate crime
7 prevention and response networks and other anti-hate groups
8 concerning hate crimes and gangs.

9 (b) Strive to provide inmates with safe environments in which
10 they are not pressured to join gangs or hate groups and do not feel
11 a need to join them in self-defense.

12 SEC. 20. Section 422.93 is added to the Penal Code, to read:

13 422.93. (a) It is the public policy of this state to protect the
14 public from crime and violence by encouraging all persons who
15 are victims of or witnesses to crimes, or who otherwise can give
16 evidence in a criminal investigation, to cooperate with the criminal
17 justice system and not to penalize these persons for being victims
18 or for cooperating with the criminal justice system.

19 (b) Whenever an individual who is a victim of or witness to a
20 hate crime, or who otherwise can give evidence in a hate crime
21 investigation, is not charged with or convicted of committing any
22 crime under state law, a peace officer may not detain the individual
23 exclusively for any actual or suspected immigration violation or
24 report or turn the individual over to federal immigration
25 authorities.

26 SEC. 21. Section 422.95 of the Penal Code is amended and
27 renumbered to read:

28 422.85. (a) In the case of any person who is convicted of any
29 offense defined in Section 302, 423.2, 594.3, 11411, 11412, or
30 11413, or for any hate crime, the court may order that the
31 defendant be required to do one or all of the following as a
32 condition of probation:

33 (1) Complete a class or program on racial or ethnic sensitivity,
34 or other similar training in the area of civil rights, or a one-year
35 counseling program intended to reduce the tendency toward
36 violent and anti-social behavior if that class, program, or training
37 is available and was developed or authorized by the court or local
38 agencies in cooperation with organizations serving the affected
39 community.

1 (2) Make payments or other compensation to a
2 community-based program or local agency that provides services
3 to victims of hate violence.

4 (3) Be required to reimburse the victim for reasonable costs of
5 counseling and other reasonable expenses that the court finds are
6 the direct result of the defendant's acts.

7 (b) Any payments or other compensation ordered under this
8 section shall be in addition to restitution payments required under
9 Section 1203.04, and shall be made only after that restitution is
10 paid in full.

11 SEC. 22. Section 594.3 of the Penal Code is amended to read:

12 594.3. (a) Any person who knowingly commits any act of
13 vandalism to a church, synagogue, mosque, temple, building
14 owned and occupied by a religious educational institution, or other
15 place primarily used as a place of worship where religious services
16 are regularly conducted or a cemetery is guilty of a crime
17 punishable by imprisonment in the state prison or by
18 imprisonment in the county jail for not exceeding one year.

19 (b) Any person who knowingly commits any act of vandalism
20 to a church, synagogue, mosque, temple, building owned and
21 occupied by a religious educational institution, or other place
22 primarily used as a place of worship where religious services are
23 regularly conducted or a cemetery, which is shown to have been
24 a hate crime and to have been committed for the purpose of
25 intimidating and deterring persons from freely exercising their
26 religious beliefs, is guilty of a felony punishable by imprisonment
27 in the state prison.

28 (c) For purposes of this section, "hate crime" has the same
29 meaning as Section 422.55.

30 SEC. 23. Section 1170.75 of the Penal Code is amended and
31 renumbered to read:

32 422.76. Except where the court imposes additional
33 punishment under Section 422.75 or in a case in which the person
34 has been convicted of an offense subject to Section 1170.8, the fact
35 that a person committed a felony or attempted to commit a felony
36 that is a hate crime shall be considered a circumstance in
37 aggravation of the crime in imposing a term under subdivision (b)
38 of Section 1170.

39 SEC. 24. Section 11410 of the Penal Code is amended to read:

1 11410. (a) The Legislature finds and declares that it is the
2 right of every person regardless of actual or perceived disability,
3 gender, nationality, race or ethnicity, religion, sexual orientation,
4 or association with a person or group of these actual or perceived
5 characteristics, to be secure and protected from fear, intimidation,
6 and physical harm caused by the activities of violent groups and
7 individuals. It is not the intent of this chapter to interfere with the
8 exercise of rights protected by the Constitution of the United
9 States. The Legislature recognizes the constitutional right of every
10 citizen to harbor and express beliefs on any subject whatsoever and
11 to associate with others who share similar beliefs. The Legislature
12 further finds however, that the advocacy of unlawful violent acts
13 by groups against other persons or groups under circumstances
14 where death or great bodily injury is likely to result is not
15 constitutionally protected, poses a threat to public order and safety
16 and should be subject to criminal and civil sanctions.

17 (b) For purposes of this section, the terms “disability,”
18 “gender,” “nationality,” “race or ethnicity,” “religion,” “sexual
19 orientation,” and “association with a person or group with these
20 actual or perceived characteristics” have the same meaning as in
21 Section 422.55 and 422.56.

22 SEC. 25. Section 11413 of the Penal Code is amended to read:

23 11413. (a) Any person who explodes, ignites, or attempts to
24 explode or ignite any destructive device or any explosive, or who
25 commits arson, in or about any of the places listed in subdivision
26 (b), for the purpose of terrorizing another or in reckless disregard
27 of terrorizing another is guilty of a felony, and shall be punished
28 by imprisonment in the state prison for three, five, or seven years,
29 and a fine not exceeding ten thousand dollars (\$10,000).

30 (b) Subdivision (a) applies to the following places:

31 (1) Any health facility licensed under Chapter 2 (commencing
32 with Section 1250) of Division 2 of the Health and Safety Code,
33 or any place where medical care is provided by a licensed health
34 care professional.

35 (2) Any church, temple, synagogue, mosque, or other place of
36 worship.

37 (3) The buildings, offices, and meeting sites of organizations
38 that counsel for or against abortion or among whose major
39 activities are lobbying, publicizing, or organizing with respect to
40 public or private issues relating to abortion.

1 (4) Any place at which a lecture, film-showing, or other private
2 meeting or presentation that educates or propagates with respect
3 to abortion practices or policies, whether on private property or at
4 a meeting site authorized for specific use by a private group on
5 public property, is taking place.

6 (5) Any bookstore or public or private library.

7 (6) Any building or facility designated as a courthouse.

8 (7) The home or office of a judicial officer.

9 (8) Any building or facility regularly occupied by county
10 probation department personnel in which the employees perform
11 official duties of the probation department.

12 (9) Any private property, if the property was targeted in whole
13 or in part because of any of the actual or perceived characteristics
14 of the owner or occupant of the property listed in subdivision (a)
15 of Section 422.55.

16 (10) Any public or private school providing instruction in
17 kindergarten or grades 1 to 12, inclusive.

18 (c) As used in this section, “judicial officer” means a
19 magistrate, judge, justice, commissioner, referee, or any person
20 appointed by a court to serve in one of these capacities, of any state
21 or federal court located in this state.

22 (d) As used in this section, “terrorizing” means to cause a
23 person of ordinary emotions and sensibilities to fear for personal
24 safety.

25 (e) Nothing in this section shall be construed to prohibit the
26 prosecution of any person pursuant to Section 12303.3 or any other
27 provision of law in lieu of prosecution pursuant to this section.

28 SEC. 26. Section 13023 of the Penal Code is amended to read:

29 13023. (a) Subject to the availability of adequate funding, the
30 Attorney General shall direct local law enforcement agencies to
31 report to the Department of Justice, in a manner to be prescribed
32 by the Attorney General, any information that may be required
33 relative to hate crimes, and shall provide to the department any
34 general orders or formal policies on hate crimes and the hate crime
35 pamphlet required pursuant to Section 422.92.

36 (b) On or before July 1 of each year, the Department of Justice
37 shall submit a report to the Legislature analyzing the results of the
38 information obtained from local law enforcement agencies
39 pursuant to this section.

1 (c) For purposes of this section, “hate crime” has the same
2 meaning as in Section 422.55.

3 SEC. 27. Section 13515.25 of the Penal Code is amended to
4 read:

5 13515.25. (a) ~~The~~ *By July 1, 2006, the* Commission on Peace
6 Officer Standards and Training shall establish and keep updated a
7 continuing education classroom training course relating to law
8 enforcement interaction with mentally disabled persons. The
9 training course shall be developed by the commission in
10 consultation with appropriate community, local, and state
11 organizations and agencies that have expertise in the area of mental
12 illness and developmental disability, and with appropriate
13 consumer and family advocate groups. In developing the course,
14 the commission shall also examine existing courses certified by
15 the commission that relate to mentally disabled persons. The
16 commission shall make the course available to law enforcement
17 agencies in California.

18 (b) The course described in subdivision (a) shall consist of
19 classroom instruction and shall utilize interactive training methods
20 to ensure that the training is as realistic as possible. The course
21 shall include, at a minimum, core instruction in all of the
22 following:

23 (1) The cause and nature of mental illnesses and developmental
24 disabilities.

25 (2) How to identify indicators of mental disability and how to
26 respond appropriately in a variety of common situations.

27 (3) Conflict resolution and de-escalation techniques for
28 potentially dangerous situations involving mentally disabled
29 persons.

30 (4) Appropriate language usage when interacting with
31 mentally disabled persons.

32 (5) Alternatives to lethal force when interacting with
33 potentially dangerous mentally disabled persons.

34 (6) Community and state resources available to serve mentally
35 disabled persons and how these resources can be best utilized by
36 law enforcement to benefit the mentally disabled community.

37 (7) The fact that a crime committed in whole or in part because
38 of an actual or perceived disability of the victim is a hate crime
39 punishable under Title 11.6 (commencing with Section 422.55) of
40 Part 1.

1 (c) The commission shall submit a report to the Legislature by
2 October 1, 2004, that shall include all of the following:

3 (1) A description of the process by which the course was
4 established, including a list of the agencies and groups that were
5 consulted.

6 (2) Information on the number of law enforcement agencies
7 that utilized, and the number of officers that attended, the course
8 or other courses certified by the commission relating to mentally
9 disabled persons from July 1, 2001, to July 1, 2003, inclusive.

10 (3) Information on the number of law enforcement agencies
11 that utilized, and the number of officers that attended, courses
12 certified by the commission relating to mentally disabled persons
13 from July 1, 2000, to July 1, 2001, inclusive.

14 (4) An analysis of the Police Crisis Intervention Training (CIT)
15 Program used by the San Francisco and San Jose Police
16 Departments, to assess the training used in these programs and
17 compare it with existing courses offered by the commission in
18 order to evaluate the adequacy of mental disability training
19 available to local law enforcement officers.

20 (d) The Legislature encourages law enforcement agencies to
21 include the course created in this section, and any other course
22 certified by the commission relating to mentally disabled persons,
23 as part of their advanced officer training program.

24 (e) It is the intent of the Legislature to reevaluate, on the basis
25 of its review of the report required in subdivision (c), the extent to
26 which law enforcement officers are receiving adequate training in
27 how to interact with mentally disabled persons.

28 SEC. 28. Section 13519.4 of the Penal Code is amended to
29 read:

30 13519.4. (a) The commission shall develop and disseminate
31 guidelines and training for all law enforcement officers in
32 California as described in subdivision (a) of Section 13510 and
33 who adhere to the standards approved by the commission, on the
34 racial and cultural differences among the residents of this state.
35 The course or courses of instruction and the guidelines shall stress
36 understanding and respect for racial and cultural differences, and
37 development of effective, noncombative methods of carrying out
38 law enforcement duties in a racially and culturally diverse
39 environment.

(b) The course of basic training for law enforcement officers shall include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section the following shall apply:

(1) “Disability,” “gender,” “nationality,” “religion,” and “sexual orientation” have the same meaning as in Section 422.55.

(2) “Culturally diverse” and “cultural diversity” include, but are not limited to, disability, gender, nationality, religion, and sexual orientation issues.

(3) “Racial” has the same meaning as “race or ethnicity” in Section 422.55.

(d) The Legislature finds and declares as follows:

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

(4) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(e) “Racial profiling,” for purposes of this section, is the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.

(f) A law enforcement officer shall not engage in racial profiling.

(g) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training. ~~Training shall begin being offered no later than January 1, 2002. The curriculum shall be created by the commission in collaboration with a five-person panel, appointed no later than March 1, 2001, as follows: the Governor shall appoint three members and one member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. Each appointee shall be appointed from among prominent members of the following organizations:~~

~~(1) State Conference of the NAACP.~~

~~(2) Brotherhood Crusade.~~

~~(3) Mexican American Legal Defense and Education Fund.~~

~~(4) The League of United Latin American Citizens.~~

~~(5) American Civil Liberties Union.~~

~~(6) Anti-Defamation League.~~

~~(7) California NOW.~~

~~(8) Asian Pacific Bar of California.~~

~~(9) The Urban League.~~

~~(h) Members of the panel shall not be compensated, except for reasonable per diem expenses related to their work for panel purposes.~~

~~(i)~~

(h) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework and shall include and examine the patterns, practices, and protocols that make up racial profiling. This training shall prescribe patterns, practices, and protocols that prevent racial profiling. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling. The course of instruction shall include, but not be limited to, adequate consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up cultural differences among residents in a local community.

(2) Negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations.

1 (3) The history and the role of the civil rights movement and
2 struggles and their impact on law enforcement.

3 (4) Specific obligations of officers in preventing, reporting,
4 and responding to discriminatory or biased practices by fellow
5 officers.

6 (5) Perspectives of diverse, local constituency groups and
7 experts on particular cultural and police-community relations
8 issues in a local area.

9 ~~(j)~~

10 (i) Once the initial basic training is completed, each law
11 enforcement officer in California as described in subdivision (a)
12 of Section 13510 who adheres to the standards approved by the
13 commission shall be required to complete a refresher course every
14 five years thereafter, or on a more frequent basis if deemed
15 necessary, in order to keep current with changing racial and
16 cultural trends.

17 ~~(k)~~

18 (j) The Legislative Analyst shall conduct a study of the data
19 being voluntarily collected by those jurisdictions that have
20 instituted a program of data collection with regard to racial
21 profiling, including, but not limited to, the California Highway
22 Patrol, the City of San Jose, and the City of San Diego, both to
23 ascertain the incidence of racial profiling and whether data
24 collection serves to address and prevent such practices, as well as
25 to assess the value and efficacy of the training herein prescribed
26 with respect to preventing local profiling. The Legislative Analyst
27 may prescribe the manner in which the data is to be submitted and
28 may request that police agencies collecting such data submit it in
29 the requested manner. The Legislative Analyst shall provide to the
30 Legislature a report and recommendations with regard to racial
31 profiling by July 1, 2002.

32 SEC. 29. Section 13519.6 of the Penal Code is amended to
33 read:

34 13519.6. (a) The commission shall develop guidelines and a
35 course of instruction and training for law enforcement officers
36 who are employed as peace officers, or who are not yet employed
37 as a peace officer but are enrolled in a training academy for law
38 enforcement officers, addressing hate crimes. "Hate crimes," for
39 purposes of this section, has the same meaning as in Section
40 422.55.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims.

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(6) Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness.

(7) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems.

(8) Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the Attorney General determines are likely.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b), and shall include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:

(1) A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.

1 (2) The definition of “hate crime” in Section 422.55.

2 (3) References to hate crime statutes including Section 422.6.

3 (4) A title-by-title specific protocol that agency personnel are
4 required to follow, including, but not limited to, the following:

5 (A) Preventing and preparing for likely hate crimes by, among
6 other things, establishing contact with persons and communities
7 who are likely targets, and forming and cooperating with
8 community hate crime prevention and response networks.

9 (B) Responding to reports of hate crimes, including reports of
10 hate crimes committed under the color of authority.

11 (C) Accessing assistance, by, among other things, activating
12 the Department of Justice hate crime rapid response protocol when
13 necessary.

14 (D) Providing victim assistance and followup, including
15 community followup.

16 (E) Reporting.

17 (d) (1) The course of training leading to the basic certificate
18 issued by the commission shall include the course of instruction
19 described in subdivision (a).

20 (2) Every state law enforcement and correctional agency, and
21 every local law enforcement and correctional agency to the extent
22 that this requirement does not create a state-mandated local
23 program cost, shall provide its peace officers with the basic course
24 of instruction as revised pursuant to the act that amends this section
25 in the 2003–04 session of the Legislature, beginning with officers
26 who have not previously received the training. Correctional
27 agencies shall adapt the course as necessary.

28 (e) As used in this section, “peace officer” means any person
29 designated as a peace officer by Section 830.1 or 830.2.

30 (f) *The additional training requirements imposed under this*
31 *section by legislation adopted in 2004 shall be implemented by*
32 *July 1, 2007.*

33 SEC. 30. Section 13519.64 is added to the Penal Code, to
34 read:

35 13519.64. (a) The Legislature finds and declares that
36 research, including “Special Report to the Legislature on Senate
37 Resolution 18: Crimes Committed Against Homeless Persons” by
38 the Department of Justice and “Hate, Violence, and Death: A
39 Report on Hate Crimes Against People Experiencing
40 Homelessness from 1999–2002” by the National Coalition for the

1 Homeless demonstrate that California has had serious and
2 unaddressed problems of crime against homeless persons,
3 including homeless persons with disabilities.

4 (b) (1) ~~The~~ *By July 1, 2005, the* Commission on Peace Officer
5 Standards and Training, using available funding, shall develop a
6 two-hour telecourse to be made available to all law enforcement
7 agencies in California on crimes against homeless persons and on
8 how to deal effectively and humanely with homeless persons,
9 including homeless persons with disabilities. The telecourse shall
10 include information on multimission criminal extremism, as
11 defined in Section 13519.6. In developing the telecourse, the
12 commission shall consult subject-matter experts including, but not
13 limited to, homeless and formerly homeless persons in California,
14 service providers and advocates for homeless persons in
15 California, experts on the disabilities that homeless persons
16 commonly suffer, the California Council of Churches, the
17 National Coalition for the Homeless, the Senate Office of
18 Research, and the Criminal Justice Statistics Center of the
19 Department of Justice.

20 (2) Every state law enforcement agency, and every local law
21 enforcement agency, to the extent that this requirement does not
22 create a state-mandated local program cost, shall provide the
23 telecourse to its peace officers.

24 ~~SEC. 31. Section 13519.65 is added to the Penal Code, to~~
25 ~~read:~~

26 ~~13519.65. (a) Each state and local law enforcement agency~~
27 ~~that reports crimes to the Department of Justice pursuant to other~~
28 ~~provisions of law shall report when a victim appears to be~~
29 ~~homeless or self-identifies as homeless.~~

30 ~~(b) In requiring law enforcement agencies to report~~
31 ~~information pursuant to other provisions of law, the department~~
32 ~~shall not do any of the following to meet the requirements of this~~
33 ~~section:~~

34 ~~(1) Require any information except whether the victim is~~
35 ~~homeless.~~

36 ~~(2) Require a law enforcement agency to begin reporting the~~
37 ~~information that this section requires until the law enforcement~~
38 ~~agency has exhausted all the reporting forms that omit that~~
39 ~~information and that the law enforcement agency printed to~~

1 ~~comply with the requirements of the other provisions of law before~~
2 ~~the effective date of this section.~~

3 ~~(3) Require a local law enforcement agency to take any other~~
4 ~~action that would incur a state-mandated local program cost.~~

5 ~~(e) The department, subject to the availability of adequate~~
6 ~~funds, shall analyze the information it receives pursuant to this~~
7 ~~section and submit a report to the Legislature annually starting~~
8 ~~January 1, 2006, including any recommendations for legislation~~
9 ~~the Attorney General deems necessary. The department may~~
10 ~~combine the report with any other report it submits to reduce costs.~~

11 ~~SEC. 32.~~

12 ~~SEC. 31.~~ Section 13870 of the Penal Code is repealed.

13 ~~SEC. 33.~~

14 ~~SEC. 32.~~ Section 13871 of the Penal Code is repealed.

15 ~~SEC. 34.~~

16 ~~SEC. 33.~~ Section 13873 of the Penal Code is amended and
17 renumbered to read:

18 422.92. (a) Every state and local law enforcement agency in
19 this state shall make available a brochure on hate crimes to victims
20 of these crimes and the public.

21 (b) The Department of Fair Employment and Housing shall
22 provide existing brochures, making revisions as needed, to local
23 law enforcement agencies upon request for reproduction and
24 distribution to victims of hate crimes and other interested parties.
25 In carrying out these responsibilities, the department shall consult
26 the Fair Employment and Housing Commission, the Department
27 of Justice, and the Victim Compensation and Government Claims
28 Board.

29 ~~SEC. 35. No reimbursement is required by this act pursuant~~
30 ~~to Section 6 of Article XIII B of the California Constitution for~~
31 ~~certain costs that may be incurred by a local agency or school~~
32 ~~district because in that regard this act creates a new crime or~~
33 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
34 ~~for a crime or infraction, within the meaning of Section 17556 of~~
35 ~~the Government Code, or changes the definition of a crime within~~
36 ~~the meaning of Section 6 of Article XIII B of the California~~
37 ~~Constitution.~~

38 ~~However, notwithstanding Section 17610 of the Government~~
39 ~~Code, if the Commission on State Mandates determines that this~~
40 ~~act contains other costs mandated by the state, reimbursement to~~

~~1 local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code. If the statewide cost of the
4 claim for reimbursement does not exceed one million dollars
5 (\$1,000,000), reimbursement shall be made from the State
6 Mandates Claims Fund.~~

7 *SEC. 34. No reimbursement is required by this act pursuant
8 to Section 6 of Article XIII B of the California Constitution
9 because the only costs that may be incurred by a local agency or
10 school district will be incurred because this act creates a new crime
11 or infraction, eliminates a crime or infraction, or changes the
12 penalty for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition of a
14 crime within the meaning of Section 6 of Article XIII B of the
15 California Constitution.*

